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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
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9 UNITED STATES OF AMERICA,  
10 Plaintiff,

11 v.  
12 EMMETT WESSON,  
13 Defendant.

NO. CR-01-6027-RHW

**ORDER DENYING  
DEFENDANT'S MOTION  
REQUESTING REDUCTION OF  
SENTENCE PURSUANT TO §  
3852(c)(2)**

14 Before the Court is Defendant's Motion Requesting Reduction of Sentence  
15 Pursuant to § 3852(c)(2) (ECF No. 118). The motion was heard without oral  
16 argument.

17 Defendant moves the Court to reduce his sentence pursuant to 18 U.S.C. §  
18 3582(c)(2), which provides:

19 (2) in the case of a defendant who has been sentenced to a term  
20 of imprisonment based on a sentencing range that has subsequently  
21 been lowered by the Sentencing Commission pursuant to 28 U.S.C.  
22 994(o), upon motion of the defendant or the Director of the Bureau of  
23 Prisons, or on its own motion, the court may reduce the term of  
imprisonment, after considering the factors set forth in section 3553(a)  
to the extent that they are applicable, if such a reduction is consistent  
with applicable policy statements issued by the Sentencing  
Commission.

24 Defendant asserts that during the original sentencing the Court did not  
25 consider the crack/powder disparity and asks the Court to re-sentence Defendant to  
120 months.

27 Defendant relies on an unpublished opinion from the District of Minnesota.  
28 However, as Judge Rosenbaum noted, that case represented a "singular and unique

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1 exception" to the general rule that "[a] career offender sentence, or sentence  
2 imposed by a statutory minimum, is generally ineligible for a § 3582(c) sentence  
3 reduction." *United States v. Miller*, 2010 WL 3119768 (D. Minn. Aug. 6, 2010).  
4 The Ninth Circuit adheres to the general rule and has not recognized any such  
5 exception. *See United States v. Leniear*, 574 F.3d 668 (9<sup>th</sup> Cir. 2009); *United*  
6 *States v. Wesson*, 583 F.3d 728 (9<sup>th</sup> Cir. 2009); *United States v. Paulk*, 569 F.3d  
7 1094 (9<sup>th</sup> Cir. 2009) (holding that a defendant sentenced pursuant to a statutory  
8 mandatory minimum is not entitled to a reduction of his prison sentence under  
9 Amendment 706).

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Defendant's Motion Requesting Reduction of Sentence Pursuant to §  
12 3852(c)(2) (ECF No. 118) is **DENIED**.

13 2. The Court declines to issue a Certificate of Appealability.

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
15 Order and provide a copies to Defendant and counsel.

16 **DATED** this 12<sup>th</sup> day of July, 2011.

17  
18 s/Robert H. Whaley

19 ROBERT H. WHALEY  
20 United States District Judge

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REDUCTION OF SENTENCE PURSUANT TO § 3852(c)(2) ~ 2**